92-686

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1992

COUNTY OF INYO
and COUNTY OF INYO
on behalf of DANIEL P., a Minor

Petitioners,

v.

ROBERT GUTIERREZ,

Respondent.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

NOT FOR PUBLICATION

Filed APR 29, 1992
Court of Appeal Fourth District

COURT OF APPEAL, FOURTH DISTRICT
DIVISION TWO
STATE OF CALIFORNIA

In re DANIEL P., a Minor.	
COUNTY OF INYO, et al., Plaintiff and Respondent,	E008636 (Super. Ct. No. 89-708)
v.	**OPINION**
ROBERT GUTIERREZ, Defendant and Appellant.	

Appeal from a judgment of the Superior Court of Inyo County. Don. L. Chapman, Judge. Reversed.

California Indian Legal Services, by Lawrence R. Stidham, Dorothy Alther, Michael S. Pfeffer and Stephen V. Quesenberry, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Harley D. Mayfield,

Senior Assistant Attorney General, Rudolf Corona, Jr., Supervising Deputy Attorney General, Raquel M. Gonzalez, Deputy Attorney General, for Plaintiff and Respondent.

L. H. Gibbons, District Attorney, Family Support Division, by Linda Anisman, Deputy District Attorney, for Plaintiff and Respondent.

Robert Gutierrez (defendant) has appealed from the trial court's judgment fixing paternity and order reimbursement of child support. The judgment of paternity was incident to an action brought by the County of Inyo (plaintiff), seeking reimbursement of AFDC payments made for the benefit of Daniel P., the alleged minor child of defendant. Defendant contends that the trial court was without authority to determine the paternity of a Native American living on a reservation because determination of

paternity is an issue falling within the area of traditional tribal self-governance. The County of Inyo (plaintiff) argues that the state court does have the authority to make a paternity determination because such determination is a requisite condition precedent to the county's permissible collection of reimbursement of AFDC payments, an area in which state action against Native Americans is authorized.

We hold that the determination of paternity is an issue within the area of traditional tribal control, with the result that the trial court's determination of paternity here interfered with the tribe's ability to govern itself according to its own law applicable to the area of domestic relations. We shall reverse the judgment accordingly.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant, a Native American, is a member of the Big Pine Tribe and lives on the Big Pine Paiute/Shoshone Reservation. The Big Pine Tribe is a federally recognized tribe. The child, Daniel P., and his mother, Retha P., are also members of the Big Pine Tribe and live on the reservation.

After payments to Retha P., for the benefit of Daniel P., under the AFDC categorical aid program, plaintiff filed a complaint against defendant, seeking reimbursement of those payments, determination of defendant's paternity of Daniel P., together with an order of prospective child support. Defendant filed an answer, alleging the affirmative defense that state courts and agencies lacked subject matter jurisdiction either to establish paternity or to enforce state child support orders against members of a federally-recognized tribe who are

residents of a reservation. Defendant then filed an amended answer, in which he denied he was the father of Daniel P. and again alleged the affirmative defense that the state court lacked jurisdiction over the paternity issue.

Plaintiff then moved to compel a blood test and payment of temporary support, to which defendant filed opposition, once again raising the jurisdictional issue noted. The trial court granted the motion to compel the blood test and the motion for temporary support. The trial court based its ruling on this court's opinion in County of Inyo v. Jeff (1991) 227 Cal.App.3d 487. The court reasoned, because AFDC reimbursement may be sought from Native Americans living on a reservation and because determination of paternity is an essential part of the collection of reimbursement, that the provisions of Evidence Code section 892

(order for blood tests in civil actions involving paternity) may be permissibly applied in determining paternity even against a Native American living on a reservation.

The trial court then entered a judgment determining that defendant was the father of Daniel P. and owed him a duty of support. The court reserved the issue of the amount of child support. This appeal followed.

DISCUSSION

The assignment of error inherent in defendant's argument on appeal is that the trial court was without the authority to compel defendant, a Native American living on the reservation, to submit to a blood test and to make a determination of paternity based on the results of that blood test. This contention raises a pure question of law and is thus subject to this court's de novo review. (Stratton v.

First National Life Ins. Co. (1989) 210 Cal.App.3d 1071.) In our view, the trial court committed an error of federal proportions by granting plaintiff's motion to compel the blood test and by rendering a judgment of paternity thereon.

In plaintiff's complaint for reimbursement of AFDC payments and child support, plaintiff alleged the defendant was the father of Daniel P. In his answer, defendant asserted his status as Native American and denied paternity. For reasons stated below, before a motion to compel a bloodtest could be granted, it was incumbent on plaintiff to prove, in view of defendant's Native American status, that, rather than deferring the determination of paternity to a tribal court, the state court could permissibly adjudicate paternity.

"Deference to tribal courts in tribal affairs is a fundamental tenet of federal

jurisprudence. (United States v. Plainbull (Feb. 26, 1992) CV-89-193-JFB, 92 Daily Journal D.A.R. 2536.) The United States Supreme Court has recognized again and again the federal policy supporting tribal self-government. (See, e.g., Iowa Mutual Ins. Co. v. LaPlante (1987) 480 U.S. 9, 14; Three Affiliated Tribes v. Wold Engineering (1986) 476 U.S. 877, 890; Bryan v. Itasca County (1976) 426 U.S. 373, 387-389; Williams v. Lee (1953) 358 U.S. 217, 220.) The test for determining if a state court has the authority to adjudicate causes of action involving Native Americans has been set forth in Williams v. Lee (1959) 358 U.S. 217. The holding in Williams announced the "infringement test" for determining when state action interferes with the rights of Native Americans to govern themselves. In Williams, a non-Native American who operated a general store on a reservation,

brought suit in an Arizona state court to collect for goods he had sold to tribal members on credit. The Supreme Court held that the state court did not have authority to rule on the claim because, under the circumstances, the state court's action would infringe on the right of Native Americans living on a reservation to govern themselves. (Id. at p. 220.) (Emphasis added.)

More important to our analysis is the U.S. Supreme Court's explicit statement that the determination of paternity is a traditional area of tribal self-governance and thus not a matter for state court adjudication. Three Affiliated Tribes v. Wold Engineering (1986) 476 U.S. 877, 889. The Supreme Court in Wold examined a North Dakota statute which required Native Americans to disclaim tribal jurisdiction over a number of domestic relations matters in exchange for the right to sue a

corporation in state court for negligence and breach of contract. The statute provided for state civil jurisdiction over the determination of parentage, marriage contracts, and termination of parental rights, among other domestic relations matters. The high court stated, "Although these subjects clearly encompass areas of traditional tribal control [citations], the North Dakota statute contemplates that state civil law will control in these areas." (Id. at p. 889.) (Emphasis added.) The Supreme Court struck down the statute. The court rejected the idea that state law would control in the above areas in cases "that arise on the reservation, that involve only Indians, and that concern subjects which are within the jurisdiction of the tribal court." (Id. at p. 890.) The court concluded, "This result simply cannot be reconciled with

Congress' jealous regard for Indian self-governance. [Citations.]" (Id.)

In spite of the high court's explicit inclusion of paternity as being among areas of traditional tribal control, plaintiff contends that Wold does not support defendant's proposition that the determination of paternity is exclusively a tribal matter.[1/] Plaintiff argues, however, even if paternity is an area of traditional tribal self-governance, that the state's interest in determining paternity outweighs the interest of the

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1. Plaintiff argues that Wold is not relevant authority because its enumeration of domestic relations matters traditionally under the control of the tribes is followed by a citation to two cases which do not deal directly with paternity. The Wold opinion cites to Fisher v. District Court (1976) 424 U.S. 385. Fisher held that the Indian tribe had exclusive jurisdiction over an adoption proceeding. The other case, United States v. Quiver (1916) 241 U.S. 602, held that the tribe had exclusive jurisdiction over an adultery prosecution. This contention does not refute the court's explicit inclusion of paternity in its list.

Native American tribe. (See, Rice v. Rehner (1983) 463 U.S. 713 [if the court does not find an established tradition of self-governance, or if it determines that the balance of state, federal, and tribal interests so requires, the court may accord less weight to the "backdrop" of tribal sovereignty.]) The question posed by plaintiff in its brief exposes the way in which plaintiff has overlooked the traditional sovereignty of the tribe and the federal policy to guard this sovereignty, particularly in domestic relations matters. Plaintiff asks: "What valid interest could the tribe have in shielding appellant from his legal and moral obligation to support his child by preventing the state from pursuing a declaration of paternity in state court?"

Our ruling that the state court may not compel a blood test and determine paternity does not necessarily shield

defendant from his obligation to support his child. (See p. 12, infra.) Instead, the purpose of the ruling is to guard tribal self-governance in a traditional area of tribal control. Native American customs and traditions may dictate different approaches than those which the state may use, see Chino v. Chino (1977) 561 P.2d 476, and we are therefore vigilant against the destruction of tribal values and institutions. The rulings of two of our sister state courts provide further guidance.

The North Carolina Supreme Court has stated that "[t]he determination of paternity of an Indian child is of special interest to tribal self-governance, the right of reservation Indians to make their own laws and be governed by them. Such determination strikes at the essence of the tribe's internal relations." (Jackson Cty. Child Supp. Enforce. v. Swayney

(1987) 352 S.E.2d 413, 419.) That court reasoned that the state court's determination of paternity would create a risk of conflicting adjudication concerning respective rights of Native Americans living on the reservation and would determine the authority of the tribal court.

The Supreme Court of North Dakota has held that North Dakota did not have the authority to determine the paternity of Indian tribal members because paternity was a matter intimately connected with tribal self-governance. (McKenzie County Social Services (1986) 392 N.W. 399.) That court concluded, based on Williams v. Lee, supra, 358 U.S. 217, that the state court's ruling would undermine the authority of the tribal courts over reservation affairs and thus infringe on Indian self-government. (Id. at p. 402.)

In both of the above-cited cases, the tribal court was available to the parties for a determination of paternity. In support of its argument that the state court should determine paternity, plaintiff has stated in its brief on appeal and in documents before the trial court that there are no tribal courts operating on the Big Pine Paiute/Shoshone Reservation. No such facts were offered in evidence. The plaintiff's written statements do not constitute proof on this record that there is no tribal court or other tribal mechanism to which the plaintiff could present the issue of paternity for adjudication.

A plaintiff has the burden of pleading and proving every fact essential to the plaintiff's claim for relief. (See Evid. Code, § 500; 1 Witkin, Cal.Evidence, (3d Ed. 1985) § 133, p. 117.) Moreover, the burden of producing evidence as to a

particular fact is on the party against whom a finding on the fact would be required in the absence of further evidence. (Evid. Code, § 550.) Defendant was not required to prove the existence of the tribal court. "'The opponent whose case is a denial of the other party's affirmation . . . may legally sit inactive, and expect the proponent to prove his own case. Therefore, until the burden of producing evidence has shifted, the opponent has no call to bring forward any evidence at all. . . . [H]is failure to produce evidence cannot at this stage afford any inference as to his lack of it; otherwise the first party would virtually be evading his legitimate burden.' [Citation.]" (Vaughn v. Coccimiglio (1966) 241 Cal.App.2d 676, 678.) In order to prove the authority of the state court to proceed here, all plaintiff needed to have done was to present evidence that

there was not existing tribal mechanism. No such effort was made, and we cannot adjudicate the issue solely on supposition.

Furthermore, because plaintiff failed to produce evidence as to the existence of a tribal mechanism, it also failed to satisfy its burden of proof. (Evid. Code, § 115.) In sum, because the trial court's actions could not be sustained absent a showing that there was no tribal court or mechanism to determine paternity, plaintiff's effort must fail because this evidence is "essential to the claim for relief." (Evid. Code, § 500.) The motion to compel the bloodtest was thus impermissibly granted.

Certainly, once paternity is established in the appropriate forum, the trial court has the authority to adjudicate cases brought by the county pursuant to the requirement of the state

and federal AFDC program to collect reimbursement. This court settled this question in County of Inyo v. Jeff (1991) 227 Cal.App.3d 487. The issue resolved in the Jeff opinion, however, differs notably from the issue currently before this court. The participation of Native Americans in the state's welfare system is not traditionally a tribal matter. State courts, therefore, have authority to order collection for reimbursement of funds that the state has paid out. Here, however, the state has assumed authority over an area in which the tribe has traditionally had authority. Until proof is presented that no tribal mechanism is available, under the mandate of federal decisions, we can do naught but guard the tribal authority over paternity determinations.

Plaintiff next argues that this court's holding in Jeff, to the effect that the state courts have authority over

claims for AFDC reimbursement and child support, would be meaningless is state courts did not have the authority to determine paternity. Plaintiff argues further, citing the decision of the Minnesota Court of Appeal in Becker County Welfare Dept. v. Bellcourt (1990) 453 N.W.2d 543, that state courts must take jurisdiction over paternity determinations because Congress could not have intended that there be no forum to execute its mandated AFDC program. (Id. at p. 544.)[2/]

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2. Plaintiff also relies on State ex rel. Dept. of Human Serv. v. Jojola (1983) 660 P.2d 590 for support of this proposition. We note another part of the rationale of decision in Jojola with which we particularly disagree. " . . . To require the State of New Mexico to proceed to the various tribal courts of the State would defeat and be a burden on the aims of the public assistance program. Therefore, we find no interference with tribal self-government as long as DHS does not assert jurisdiction within the reservation." (Id. at p. 593.) Resort to the tribal courts may be a burden on the state but that burden does not negate the impermissible interference with the tribe in an area of "traditional tribal

Plaintiff's reasoning is flawed, if not specious. State court authority over AFDC collection does not necessitate state court authority over paternity. In view of the overriding federal and tribal interest in these circumstance, plaintiff must seek to secure a determination of paternity by means of a tribal mechanism. The determination of paternity from the tribe would have full force and effect in the county's action for collection of reimbursement for AFDC payments, pursuant to the section 25 of U.S.C. 1322(c) (Public Law 280) that provides for the "full force and effect" of any tribal ordinance or customs "heretofore or hereafter adopted by an Indian tribe . . . if not inconsistent with any applicable

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control." Jojola was decided before Three Affiliated Tribes v. Wold Engineering, supra, 476 U.S. 877.

civil law of the State."[3/] The application of this section of Public Law 280 "contemplates the continuing vitality of tribal government." (Bryan v. Itasca County (1976) 426 U.S. 373, 389.) If there is no tribal mechanism or if there

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3. Public Law 280, enacted by Congress in 1953 and emended in 1968, conferred criminal and limited civil jurisdiction of Indian country to California and five other states. The statute provides, in pertinent part: [¶] "(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action and those civil laws of such State that are of general application to private persons or property shall have the same force and effect within such Indian country as they have elsewhere within the State . . . . [¶] California . . . all Indian country within the State. . . . [¶] (c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section.

is actual tribal authorization for the state's action in this area, facts we will not assume, it is up to the plaintiff to make an affirmative showing that there is none. Until such a showing is made, the state court does not have authority to determine paternity.

We regret that a possible result of our ruling here may be that defendant will temporarily escape liability to reimburse plaintiff for AFDC payments made on behalf of Daniel P. We do not condone any neglect of parental responsibility to support a child by Native Americans or otherwise. As already stated, however, on this record, we must presume the existence of a Native American forum for determining paternity. If such a forum is available, we trust this issue will be there resolved with alacrity. If such forum is not available, we expect in future proceedings, that sufficient evidence will

be smartly produced so as to empower the state court to order a blood test of defendant and consequently to determine paternity with equal alacrity. In short, the issue of defendant's paternity of Daniel P. is not even remotely res judicata. We only hold that this time around plaintiff's efforts to establish it were short of the mark.

DISPOSITION

The judgment fixing paternity and ordering reimbursement of child support are reversed.

NOT FOR PUBLICATION

/s/ McDANIEL
J.*

We concur:

/s/ RAMIREZ
P. J.

/S/ McKINSTER
J.

*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

APPENDIX B

Fourth Appellate District, Division Two,
No. E008636
S026923

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

Supreme Court
filed
July 16, 1992
Robert Wandruf
Clerk
Deputy

In re DANIEL P., A Minor

COUNTY OF INYO Et Al., Respondents

v.

ROBERT GUTIERREZ, Appellant

Petition for review DENIED.
The request for an order directing publication of the opinion is denied.

/s/
Chief Justice

APPENDIX C

Title 18 U.S.C. section 1162:

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction

may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.

California . . All Indian country within the State.

Minnesota . . .All Indian country within the State, except the Red Lake Reservation.

Nebraska . . . All Indian country within the State.

Oregon . . . . All Indian country within the State, except the Warm Springs Reservation.

Wisconsin . . .All Indian Country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or

community that is held in trust by the United States or is subject of a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

Title 25 U.S.C. section 1902:

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Title 42 U.S.C. section 601:

For the purpose of encouraging the care of dependant children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy

dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children. Title 42 U.S.C. section 602(a)(27):

(a) "A State plan for aid and services to needy families with children must --

(27) "provide that the State has in effect a plan approved under part D of this subchapter and operates a child support program in substantial compliance with such plan;"

Title 42 U.S.C. section 651:

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

Title 42 U.S.C. section 654(4)(A):

A state plan for child and spousal support must --

(4) provide that such State will undertake

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title or section 1996k of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the state under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section

1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and

Title 42 U.S.C. section (6)(A):

A state plan for child and spousal support must --

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan)

Title 42 U.S.C. section 654(9)(A):

A state plan for child and spousal support must --

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State --

(A) in establishing paternity, if necessary,

Title 42 U.S.C. section 654(13):

A state plan for child and spousal support must --

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary tot he establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments;

Title 42 U.S.C. section 666(a)(5)(A)(i):

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(5)(A)(i) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

California Civil Code section 196(a):

(a) The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable of the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents.

California Civil Code section 248:

The obligee may enforce his right of support against the obligor and the county may proceed on behalf of the obligee to enforce his right of support against the obligor. Whenever the county furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing reimbursement and of obtaining continuing support. The right of the county to reimbursement shall be subject to any limitation otherwise imposed by the law of this state. The court may order the obligor to pay the county reasonable attorney fees and court costs in any proceeding brought by the county pursuant to this section.

California Civil Code section 7006:

(a) A child, the child's natural mother, or a man presumed to be the child's father under paragraph (1), (2),

or (3) of subdivision (a) of Section 7004, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (1), (2), or (3) of subdivision (a) of Section 7004.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (1), (2), or (3) of subdivision (a) of Section 7004 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship

presumed under paragraph (4) of subdivision (a) of Section 7004.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7004 or whose presumed father is deceased may be brought by the child or personal representative of the child, the State Department of Social Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. Such an action shall be consolidated with a proceeding pursuant to subdivision (b) of Section 7017 if a proceeding has been filed under Section 7017. The parental rights of the alleged

natural father shall be determined as set forth in subdivision (d) of Section 7017.

(d) Except as to cases coming within the provisions of Section 621 of the Evidence Code, a man not a presumed father may bring an action for the purpose of declaring that he is the natural father of a child having a presumed father under Section 7004, if the mother relinquishes for, consents to, or proposes to relinquish for or sent to, the adoption of the child. Such an action shall be brought within 30 days after the man is served as prescribed in subdivision (f) of Section 7017 with a notice that he is or could be the father of the child or the birth of the child, whichever is later. The commencement of the action shall suspend any pending proceeding in connection with the adoption of the child under a judgment in the action is final.

(e) Regardless of its terms, an agreement between an alleged or presumed father and tne mother or child does not bar an action under this section.

(f) An action under this section may be brought before the birth of the child.

(g) The district attorney may also, at his or her discretion, bring an action under this section in any case in which the district attorney believes it to be appropriate.

California Evidence Code section 892:

In a civil action which paternity in a relevant fact, the court may upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, and shall upon motion of any party to the action made at a time so as not to delay the proceedings unduly, order the mother, child, and alleged father to submit to such tests, the court may resolve the question of paternity against

such party or enforce its order if the rights of others and the interests of justice so require. Any party's refusal to submit to such tests shall be admissible in evidence in any proceeding to determine paternity.

California Welfare and Institutions Code section 11350(a),(b):

(a) In any case of separation or desertion of a parent or parents from a child or children which results in aid under this chapter being granted to such family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the following:

(1) The amount specified in an order for the support and maintenance of such family issued by a court of competent jurisdiction; or in the absence of such court order, the amount specified in paragraph (2).

(2) The amount of support which would have specified in an order for the support

and maintenance of the family during the period of separation or desertion provided that any such amount in excess of the aid paid to the family shall not be retained by the county, but disbursed to the family.

(3) The obligation shall be reduced by any amount actually paid by such parent during the period of separation or desertion for the support and maintenance of such family.

(b) The district attorney shall take appropriate action pursuant to this section in the superior court of the county which provided aid under this chapter

California Welfare and Institutions Code section 11350.1(a):

(a) Notwithstanding any other statute, in any action brought by the district attorney for child support of a minor child or children, the action may be prosecuted in the name of the county on

behalf of the child, children, or caretaker parent. The caretaker parent shall not be a necessary party in the action but may be subpoenaed as a witness. In an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues hall be limited strictly to the question of paternity, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or paternity pursuant to this section shall not be delayed or stayed because of the pendency of any other action between the parties. Judgment in an action brought pursuant to this section, and in an action brought pursuant to Section 11350, if at issue, may be rendered pursuant to a

noticed motion, which shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion.

If the defendant appears at the hearing on the motion, the court shall inquire of him or her if he or she desires to subpoena evidence and witnesses, if paternity is at issue and blood tests have not already been conducted whether he or she desires blood tests, and if he or she desires a trial. If his or her answer is in the affirmative, a continuance shall be granted to allow him or her to exercise those rights. Unless the case is determined to be complex as defined in paragraph (2) of subdivision (e) of Section 11475.1, the continuance shall not postpone the hearing to more than 75 days from the date of service of the summons and complaint. In the event that a continuance is granted, the court may make

an order for temporary support without prejudice to the right of the court to make an order for temporary support as otherwise allowed by law.

California Welfare and Institutions Code section 11475.1(a):

(a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and when appropriate enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when

appropriate, to take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.